Filed 3/30/10 P. v. Arteaga CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LORENZO ARTEAGA, Defendant and Appellant.	H034322 (Santa Clara County Super. Ct. No. CC815385)

Defendant Lorenzo Arteaga was charged by felony complaint with failing to register as a sex offender (Pen. Code, § 290.015, subd. (a)).[1] The complaint further alleged that defendant had 11 prior strikes. (§§ 667, subds. (b)-(i), 1170.12.) The court granted defendant's request to represent himself and he entered a not guilty plea. On the date set for the preliminary examination, the court declared a doubt as to defendant's competency to stand trial (§ 1368) and continued the matter. At the continued hearing, the court appointed counsel to represent defendant over his objection. (*People v. Robinson* (2007) 151 Cal.App.4th 606, 616.) Appointed counsel requested that the court appoint two doctors to examine defendant. The court granted the request.

---

[1] All further statutory references are to the Penal Code.

On October 14, 2008, defendant's appointed counsel waived the right to a jury trial for the section 1368 proceeding over defendant's objection (*People v. Harris* (1993) 14 Cal.App.4th. 984, 990-992), and the parties stipulated to a court trial (*People v. McPeters* (1992) 2 Cal.4th 1148, 1168-1169). On January 5, 6, and 7, 2009, the court held a *Marsden* hearing.[2] After hearing from defendant and his appointed counsel, the court denied defendant's request to discharge counsel.

The section 1368 hearing was held on May 21, 2009. Defendant's appointed counsel called defendant to testify. Defendant informed the court that he believed that he remained under oath from his last hearing. Defendant testified that he had never been "legally convicted" in 1993 of the underlying section 288, subdivision (a), charges; that he had appealed his conviction all the way to the United States Supreme Court; and that his appeals were still pending. He stated that he believes that various named public defenders, district attorneys, and county counsel over the years had conspired to put him in the position he was in. He "absolutely [did] not" accept his appointed counsel as his legal representative. The court asked defendant if he believed that his current appointed counsel was part of the conspiracy. Defendant responded, "Because of the allegations that I've been making now against the county."

In response to questioning by the prosecutor, defendant testified that he was appointed by a San Antonio, Texas court as an independent executor of his family estate in 1984 to 1985. He went to San Antonio College for paralegal training because of that appointment. He worked in a law library, and for a law firm as a "subrogation specialist." When he was in prison, he did his own legal work because the court had originally appointed him to represent himself and he has never subsequently waived his court appointment.

---

[2] *People v. Marsden* (1970) 2 Cal.3d 118. The transcript of the hearing is unsealed by order of the trial court at defendant's request.

When defendant was asked whether he understood the reason for the present hearing, defendant responded in part: "Yes. I understand the purposes. Obviously there's a felony – it's not an information. It's a felony complaint. But the next sequel would be a felony information. But they're not supposed to be using these proceedings, 1368, in conspiracy, in violation of Title 18 United States Code section 241 and 242 to conspire to violate my clearly applicable civil, statutory, and constitutional right to the entry of judgment of acquittal and arrested judgment which I timely made in front of the original formal sentencing judge."

The prosecutor asked defendant if he understood that, if the court found him guilty of the charges against him, his sentence could be 25 years to life. Defendant responded, "Yes. Absolutely." The prosecutor asked defendant, "Is it possible that if a court made you work with a lawyer or have a lawyer that you could work with that lawyer? Yes or No." Defendant responded in part, "First of all, you are not my lawyer. And I'm aware of your prosecution status. And I do not ever have to answer your questions in any fashion, way, or manner that you propound them and or nor that you expect them to be answered. Because I am doing everything I can as the original ongoing counsel of record, court appointed, as I've indicated to the current superior court judge, . . . I'm doing everything I can to document my original legal objections . . . ."

Counsel called David Echeandia, Ph.D., a clinical psychologist, to testify. Dr. Echeandia was appointed to conduct an evaluation of defendant in December 2008, but defendant refused to be interviewed. Dr. Echeandia subsequently reviewed defendant's medical records from Atascadero State Hospital (ASH), a transcript of the October 14, 2008 hearing in this case, and various pleadings and petitions filed by defendant, including a petition for a writ of habeas corpus. He also observed defendant during this hearing. In his opinion, defendant suffers from "schizoaffective disorder, bipolar features." "I do not believe that he fully understands the nature of the proceedings or his status here." He does not have "decisional competency to represent himself" because he is not "capable of grasping the facts and using them in a way to form a competent decision." Nor can he presently rationally assist an attorney if one were to be appointed for him to conduct of a defense of his case.

Counsel called Dr. Brad Novak, a board certified forensic psychiatrist, to testify. Dr. Novak was appointed to conduct an evaluation of defendant in September 2008, but defendant refused to be interviewed. Dr. Novak subsequently reviewed an order for commitment dated May 17, 2007; records from ASH dated June 6, 2007, through October 11, 2007; jail mental health records dated Jun 16, 2008, to January 8, 2009; and two 2008 court transcripts. He also observed defendant in court during this hearing. In Dr. Novak's opinion, defendant has "schizo[a]ffective disorder." Defendant "is not competent to stand trial." He "does not understand his status and condition . . . in the criminal proceedings." He cannot "appreciate the fact of his representing himself compared to having an attorney appointed." He is "presently not able, because of this mental illness, to consistently carry out the tasks needed to rationally present his own defense."

Appointed counsel argued to the court that she did not believe that defendant could represent himself in the underlying proceeding, or assist in a rational manner with any appointed counsel, because he does not accept that the judgment underlying the current charge is final "and that renders him unable to fully understand, rationally cooperate in the criminal proceedings." The prosecutor argued that defendant understands the nature and purpose of the criminal proceedings and that he could assist an attorney in a rational manner to present a defense. "He knows what's going on. He knows his option. He does not like it, and he is vocal about it, but he understands it."

In finding defendant not competent to stand trial, the court stated that it reviewed the transcript of the *Marsden* hearing, the transcript of the hearing at which defendant was advised of "his [section] 290 registration requirement," and all the testimony at the present hearing. The court noted that both experts testified and the court observed that defendant could not focus on any individual question, his responses were very disorganized, and his focus has been on his claim of a conspiracy regarding the underlying conviction and his ongoing fight as a result of that. Therefore, the court found, based on its "independent evaluation in conjunction with the evaluation and the opinion of the two experts," and the requirements of section 1390 and CALCRIM No. 3451, that defendant does not "understand the purpose of this particular proceeding here nor the [section] 290 proceeding." The court further found that, defendant would not be able to assist any lawyer in a rational manner in presenting a defense. "[E]ven when he talks about the unlawful conviction, it is disorganized and he goes on to many different areas that really don't relate to it." And, the court also found that defendant does not understand his status and condition in the criminal proceeding.

The court referred the matter to the South Bay Conditional Release Program (CONREP) for a treatment recommendation and continued the matter. CONREP recommended that defendant be committed to the State Department of Mental Health for placement in a State Hospital.

Defendant filed a timely notice of appeal and we appointed counsel to represent him in this court. Appointed counsel has filed an opening brief which states the case and the facts but which raises no issues. On December 28, 2009, we notified defendant of his right to submit written argument in his own behalf within 30 days. He has exercised that right by submitting, on or before January 27, 2010, three separate sets of papers. We will describe each set seriatim.

The first set of papers, filed January 11, 2010, asks for "rehearing and/or reconsideration of the December 28, 2009 in light of the fraud being perpetrated upon this court by clearly incompetent and facially disqualified for conflict of interest and by their own admission appellate appointed counsel . . ." He requests that appointed counsel's opening brief be stricken and that appointed counsel be relieved from any further duties nunc pro tunc to February 7, 1996, the date this court filed such an order in one of defendant's prior appeals (H012759). We decline to do so. (*Martinez v. Court of Appeal* (2000) 528 U.S. 152 [a criminal defendant does not have a constitutional right to self-representation on appeal, and the appellate court can require an appealing defendant to proceed with appointed counsel].)

The second set, received January 21, 2010, is a declaration from defendant that he signed on January 14, 2010, stating that he is "the court appointed attorney of record for Lorenzo Arteaga in this case." The declaration appears to describe the proceedings and his contentions regarding the case (Superior Court case No. 161396) resulting in the conviction underlying defendant's current charge of failing to register as a sex offender. Those proceedings include several appeals and writ petitions filed in this court beginning in 1993. Attached to the declaration are copies of documents from the prior proceedings. Neither the declaration nor the attached documents relate to any issues that can be raised in the current appeal.

The third set of papers, also received January 21, 2010, is an application for an extension of time to "perfect" notices of appeal in Superior case No. 161396, and others unrelated to this appeal. Attached to the application are copies of documents from the prior cases. Neither the application nor the attached documents relate to any issues that can be raised in the current appeal.

As defendant has not requested, and this court has not granted, an extension of time beyond the noticed 30 days for defendant to file additional written argument in his own behalf, we have declined to discuss the numerous other sets of papers that defendant has submitted to this court after January 27, 2010. Suffice it to say that we are confident that none of those sets of papers discuss any issues that can be raised in the current appeal.

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, and *People v. Kelly* (2006) 40 Cal.4th 106, we have reviewed the entire record and have concluded that there is no arguable issue on appeal.

The order of May 21, 2009, finding defendant incompetent to stand trial, is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MCADAMS, J.